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January 26, 2024

BY EMAIL

Jed S. Rakoff
District Court Judge
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007

Glen A. Kopp
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Re: United States v. Vitaly Borker, 22 CR 273 (JSR)

Dear Judge Rakoff:

We write on behalf of our client, Vitaly Borker, respectfully to request that Your Honor adopt the Supplemental Presentence Investigation Report that the Probation Department issued on December 8, 2023 (“the Supplemental PSI”). *See* Docket Number (“Dkt. No.”) 40. The Government does not object to this request.

On April 28, 2023, Your Honor sentenced Vitaly to a 30-month term of imprisonment to be followed by three years’ supervised release. At the time, the PSI that the Court adopted calculated Vitaly’s criminal history category at IV based on eight Criminal History points, two of which were assessed because Vitaly committed the instant offense while under a criminal justice sentence (*i.e.*, supervised release). *See* Dkt. No. 31, PSI at ¶¶ 53-54. At a base offense level of 16, the resulting Guidelines Range for Vitaly was 33 to 41 months’ imprisonment. *Id.* at ¶ 105. Following the 2023 retroactive Guidelines amendments, the Probation Department determined that Vitaly was eligible for retroactive application of the amended Guidelines. The Probation Department’s new calculation of Vitaly’s Criminal History score resulted in a two-point reduction and a decrease in his Criminal History Category from IV to III. *See* Dkt. No. 40, Supplemental PSI at 2-3. The amended Guidelines analysis results in a decrease in Vitaly’s Guidelines Range to 27 to 33 months’ imprisonment. *Id.* at 3. Despite the decrease in Vitaly’s applicable Guidelines Range, we are not seeking a new sentence. The Court’s adoption of the Supplemental PSI, however, could have positive benefits for Vitaly’s ability to qualify for certain programs in prison and would ensure an accurate record of his Criminal History Category and Guidelines Range.

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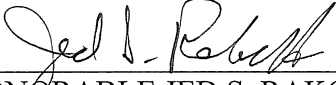
Accordingly, we respectfully request that Your Honor adopt the Supplemental PSI. Thank you for your consideration of this request.

Respectfully submitted,

/s/ Glen A. Kopp

Glen A. Kopp
Mayer Brown LLP

SO ORDERED:



HONORABLE JED S. RAKOFF
UNITED STATES DISTRICT JUDGE

1-29-24